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LAW OFFICES OF
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FEDERAL COMMUNICATIONS COMMISSION
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July 11, 1994 **DOCKET FILE COPY ORIGINAL**

Mr. William F. Caton
Acting Secretary,
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D. C. 20554

Via Messenger

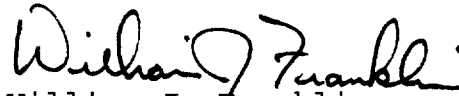
Re: **GN Docket No. 93-252**
Implementation of Sections 3(n) and 332
of the Communications Act
Regulatory Treatment of Mobile Services

Dear Mr. Caton:

Submitted herewith on behalf of PCC Management Corporation are an original plus ten (10) copies of its Reply Comments with respect to the above-referenced docket.

Kindly contact my office directly with any questions concerning this submission.

Respectfully submitted,

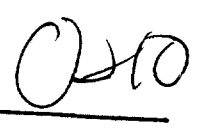


William J. Franklin
Attorney for PCC Management Corp.

Encs.

cc: PCC Management Corp.
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of Sections 3(n)) GN Docket No. 93-252
and 332 of the Communications)
Act)
)
Regulatory Treatment of)
Mobile Services)

To: The Commission

REPLY COMMENTS OF PCC MANAGEMENT CORP.

PCC Management Corp. ("PCC"), by its attorney and pursuant to Section 1.415(c) of the Commission's Rules, hereby replies to certain Comments filed with respect to the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding.^{1/} Without waiving its rights with respect to other issues raised in Comments, PCC is focusing its Reply upon the ESMR licensing proposal advanced by Nextel Communications, Inc. ("Nextel") and supported by the National Association of Business and Educational Radio, Inc. ("NABER").

THE NEXTEL PROPOSAL

Nextel proposes (Comments at 9-10) that the Commission should designate 200 of the 260 available SMR channels -- almost 77% of the total SMR channels -- for exclusive ESMR use. Those proposed ESMR channels would be channel nos. 401 thorough 600, the largest contiguous block of SMR channels. In Nextel's words

^{1/} 9 FCC Rcd ____ (FCC 94-100, released May 20, 1994) ("FNPRM").

(Comments at 11), "To clear the blocked channels for the exclusive use of ESMR operators, existing traditional analog SMR stations in the 401-to-600 band would be 'retuned' to operate on the remaining channels of the 800 MHz Private Land Mobile allocation." Further (Nextel Comments at 12), the ESMR operators would remain unfettered to compete for the remaining fraction of SMR channels as well.

Once the 401-to-600 block was cleared, Nextel proposes (Comments at 14-15) that ESMRs be licensed on an MTA basis. This licensing would be restricted (Comments at 16-17) "to licensees with an ESMR (wide-area) grant or ESMR application pending within the MTA as of August 10, 1994." However, Nextel (Comments at 17-18) would stack the deck against ESMR applicants by having the Commission divide the ESMR channel block within each MTA on the basis of licensed mobiles. Curiously, Nextel did not propose that ESMR block licenses be awarded by competitive bidding.

Nextel proposes (Comments at 19) that analog SMR licensees (to be retuned) and the ESMR licensee have 6 months to reach an agreement under which the ESMR licensee would pay for all retuning costs. If no agreement were reached, mandatory retuning would be required within 12 months of the grant of the ESMR block license.

NABER'S VERSION OF THE NEXTEL PROPOSAL

Perhaps seeing the Nextel proposal for the self-serving spectrum grab that it is, NABER (Comments at 14-21) generally supports the Nextel proposal, but with some important changes. First, NABER would make retuning by existing SMR licensees voluntary, rather than mandatory. NABER would also require the ESMR to give up low (i.e., below channel 401) SMR channels to accommodate retuned SMR systems. NABER also proposed (correctly) that retuned analog systems should not be required to meet any loading deadlines.

In contrast the Nextel's unstated premise that would reserve entire MTAs for existing ESMR carriers serving any portion thereof, NABER would also allow additional ESMR licensing to occur in unlicensed portions of the country. NABER also did not support Nextel's assumed use of MTAs as the licensing area, stating instead that either MTAs or BTAs could be used. NABER also supported the continuing development of wide-area systems in the low (i.e., below channel 401) SMR channels under the current rules and procedures.

Procedurally, NABER proposed that ESMR block applications be subject to mutually exclusive filings with a 30-day filing window, petitions to deny, and selection by competitive bidding.

**THE NEXTEL PROPOSAL IS FATALLY FLAWED
AND WOULD NOT SERVE THE PUBLIC INTEREST**

Based on its knowledge of the SMR and ESMR industry, PCC has concluded that the Nextel proposal is fatally flawed and would not serve the public interest. Specifically, the following fundamental issues are either unconsidered or unresolved in the Nextel proposal or the NABER variation thereof.

- No Demand Justification. Nextel proposes to shift almost 77% of all SMR channels to exclusive ESMR use. However, other than the happenstance that 77% of the channels represent a contiguous frequency block, the specific size of this shift is completely unjustified. Neither Nextel nor NABER supplied any demand or loading studies to show that 77% of the channels should be dedicated for ESMR use, and not 57%, or 27%, or even 87%. Existing SMR systems occur most of the 800 Mhz band now, and in urban markets, are loaded to capacity. Don't they need the spectrum also?
- No "Retuning" Feasibility. Although NABER's variation suggests some skepticism, Nextel has assumed -- without any analysis -- that all existing SMR systems in the 401-to-600 band may be retuned to lower SMR channels while keeping their same (a) transmitter location, (b) co-channel environment, and (c) power levels. In congested markets, this assumption is extremely unlikely to be true.^{2/} What happens if existing SMR systems cannot be retuned at all, or without prejudice to their license?
- New Entrants. For its own, obvious reasons, NABER seeks to prevent any new entrants into the ESMR business. As Nextel itself illustrates, this proposal would not serve the public interest. As Nextel did, new entrants can redefine or revitalize existing communications businesses. Further, Nextel does not address the situation where existing 401-to-600 SMR licensees might seek to convert to ESMR licensing (either singly or on a joint-venture basis) rather than maintain their present mode of operation on retuned channels.
- Licensing Procedures. Compounding its exclusion of new entrants, Nextel proposes that ESMR block licenses would be issued by administrative action based on SMR licensing

^{2/} In other words, you can't put 10 pounds in a 5-pound bag.

records, apparently without the filing of applications, acceptance of mutually exclusive filings or petitions to deny, or the selection between mutually exclusive applications by competitive bidding. Apparently recognizing the requirements of the Communications Act, NABER does not support Nextel's position.

- Area of License. Nextel seeks to have ESMR block licenses be allocated on an MTA-by-MTA basis. MTAs appear far too large. For example, under Nextel's proposal an ESMR licensee in New York City apparently would preclude 401-to-600 SMR operations in northern Vermont (which is part of the New York MTA). NABER addresses this problem by supporting a supplemental ESMR "unserved-area" licensing system, which effectively results in self-defined licensing areas. Further, NABER indicates either BTA or MTA licensing should be used, but does not specify which. The Commission lacks a rational basis to select an ESMR licensing scheme.

In short, the Nextel proposal (and the NABER variation) raises a substantial number of fundamental licensing, procedural, and policy questions. These unresolved issues clearly require that the Commission not accept the Nextel proposal as part of its basic CMRS rulemaking. At most, the Commission should issue a supplemental Notice of Proposed Rulemaking directed at developing a fair and equitable system of ESMR licensing.

CONCLUSION

Accordingly, PCC Management Corp. respectfully requests the Commission to adopt rules (as set forth in its Comments) which will facilitate the orderly development of 800 MHz SMR systems. The Commission should not adopt the self-serving ESMR proposal advanced by Nextel.

Respectfully Submitted,

PCC MANAGEMENT CORP.

By: William J. Franklin
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Its Attorney

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CERTIFICATE OF SERVICE

I, Andrea Kyle, a secretary in the law firm of William J. Franklin, Chartered, hereby certify that a copy of the foregoing document was mailed via first-class U.S. mail, postage prepaid, this 11th day of July, 1994, to the following:

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